HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.8408 of 1998

Dated 12th Day of February, 2007

Between:

Dokiparthy Satyanarayana .. Petitioner

And

The Commissioner for Prohibition and Excise, Hyderabad and two others .. Respondents

O R D E R:

This writ petition is filed to quash the order, dated 10.6.1997 passed by the 1st respondent in Proceedings Cr.No.3326/97/DPE/B2 by which, the order, dated 9.1.1997 of the 2nd respondent confiscating the petitioner's vehicle to the State, was confirmed .

The brief facts of the case are that the petitioner is the owner of the lorry bearing No.AP10T 2889. On the night of 11.12.1996, when the lorry was coming towards Visakhapatnam, its driver, with a view to giving lift to 12 persons, who were totally drenched in the rain, allowed them to board his lorry. During the course of inspection, the excise officials stopped the vehicle, checked it and found 492 ID arrack sachets with those persons. Then, the excise officials arrested them along with the driver and the cleaner. Thereafter, the 2nd respondent issued a show cause notice to the petitioner as to why the vehicle and the contraband should not be confiscated under Section 13 of the A.P. Prohibition Act, 1995. Pursuant to the show cause notice, the petitioner submitted a detailed explanation stating that he specifically instructed the driver and the cleaner not to allow the passengers, who carry liquor, and he is in no way responsible for commission of the alleged offence. Based on the explanation, the 2nd respondent passed an order dated 19.4.1996 confiscating the vehicle to the State. When the petitioner preferred an appeal to the 1st respondent against the order of the 2nd respondent, the 1st respondent confirmed the order of

the 2nd respondent. Aggrieved by the same, this writ petition is filed.

Having heard the learned counsel for both the parties, this Court is of the view that the authorities ought not to have confiscated the vehicle belonging to the petitioner. Maybe it is true that the vehicle is involved in a crime, but on that score it cannot be said that the owner is also responsible for carrying the liquor and as such his vehicle can be confiscated. In fact, when an identical case reported in **V.Narayana Rao Vs. State of A.P. and Others**[1] came up for a debate, a Full Bench of this Court held to the following extent:

> *" We heard the learned counsel appearing for the writ petitioners and also the learned Government pleader. We had given our anxious considerations. We have also perused the orders which are impugned in these writ petitions. In our opinion the authorities have failed to see that the petitioner loaded the consignment in Daman with necessary supporting documents and the same passed through the States of Gujarat and Maharashtra and also the State check post at Zaheerabad and as such the petitioners who are the owners of the lorries are innocent and they had no intention to violate any regulations. The authorities ought to have seen that if any TTP was required to be obtained it ought to have been insisted upon at the Zaheerabad check post itself, for failure of which the petitioner, in our opinion, cannot be penalized. It is relevant to point out that when the consignment entered the State of Maharashtra the check post at the border of Maharashtra issued TTP and similar procedure ought to have been followed at the border check post by the Andhra Pradesh State excise officials. It is not in dispute that the liquor is duty paid and they are supported by all necessary documents except TTP which is a mere technicality and hence we are of the opinion that there is no mala fide intention on the part of the petitioner to consciously or deliberately violate any regulation. As rightly contended by the learned Counsel for the petitioner, the petitioner was totally unaware of the necessity to obtain any TTP and his ignorance ought to have been considered before passing the extreme order of confiscation. The authorities have also noticed that it was nobody's case that the petitioner was trying to do business*

by indulging in illegal means and therefore mere failure to obtain TTP does not indicate any mala fide intention on the part of the petitioner. The extreme order of confiscation, in our opinion, is not warranted in this case and in our opinion it is grossly disproportionate. The law providing for confiscation in an appropriator legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefore are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of mens rea is also an essential ingredient and play a vital role in such matters. Though these contentions were specifically raised before the authorities, the same have not been considered at all in proper perspective. The investigation report of the sub-divisional officer, Vijayawada also revealed that there is no route mentioned in the import permit by the Assam Government. We have also perused the explanation submitted by the petitioner who is the owner of the lorries to the letter dated 30.6.1999. It has been clearly stated in the said explanation that the only mistake committed by the petitioner is that he has entered Andhra Pradesh without TTP and had the check post authorities at Zaheerabad wanted TTP, they would not have entered Andhra Pradesh without TTP. Neither the transporting agency nor the distillery has instructed the petitioner to take TTP from Andhra Pradesh State for passing through the State. Further, there is no route prescribed in the permit. Still, they have passed through Maharashtra State after obtaining a TTP of that State. When the route is not prescribed in the permit it is always open to the petitioner to take the lorry in any route according to their convenience. In the absence of prescription of any route and after passing through the exit check post of Maharashtra State the petitioner entered Andhra Pradesh through Zaheerabad check post which is the nearest to enter Andhra Pradesh. As already noticed the stocks are duty paid and the transaction in question is a genuine one under valid permit. It is also not the intention of the petitioners to dump the stocks in Andhra Pradesh and there is no evidence to the said effect. In the light of the submissions made in the explanation submitted by the petitioners the authorities ought to have released the stock along with lorries. However, they failed to do so which compelled the petitioner to file the appeal before

the 2nd respondent and also a revision before the State Government and again the present writ petitions before this Court.

In our opinion, the authorities ought to have considered the provisions of the Excise Act in proper perspective. There is no mens rea to commit the offence on the part of the petitioner which is one of the relevant considerations before ordering confiscation and seizure of the vehicle. In the instant case we hold that mens rea is totally absent. Therefore, there cannot be an order of confiscation of the goods or the vehicle. We therefore, allow both the writ petitions and quash the impugned orders in both these writ petitions. The security of bank guarantee, if any, furnished by the petitioners in both the writ petitions shall be released forthwith. Since we decided the case on facts and circumstances of the case we do not propose to answer the reference made by the learned single Judge. The writ petitions are accordingly allowed. No costs."

In the light of the said dicta laid down by this Court, this Court has no hesitation to hold that the order of confiscation of the petitioner's lorry bearing No.AP10T 2889 is definitely illegal.

Hence, this writ petition is allowed and the order, dated 10.6.1997 passed by the 1st respondent is hereby quashed. However, having regard to the fact that the vehicle was released during the pendency of the proceedings on condition that the petitioner furnishes bank guarantee, the authorities concerned are hereby directed to revoke the bank guarantee. No costs.

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12.02.2007

bcj

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[1] 2002(6) ALD 163 (FB)